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IN THE

Supreme Court of the United States

No. 367 October Term, 1954

FEDERAL POWER COMMISSION,
Petitioner

v.

THE STATE OF OREGON, THE FISH COMMISSION OF OREGON, THE OREGON STATE GAME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION OF THE COMMONWEALTH OF PENNSYLVANIA TO APPEAR AMICUS CURIAE AND ADOPT BRIEF OF RESPONDENTS

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 367 October Term, 1954

Federal Power Commission,

Petitioner

v.

The State of Oregon, The Fish Commission of Oregon, The Oregon State Game Commission

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On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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MOTION OF THE COMMONWEALTH OF PENNSYLVANIA TO APPEAR AMICUS CURIAE AND ADOPT BRIEF OF RESPONDENTS

NOW COMES the Commonwealth of Pennsylvania, in its sovereign capacity, by Lois G. Forer, Deputy Attorney General and Herbert B. Cohen, Attorney General, and moves the Court for leave to appear in this cause as amicus curiae and in lieu of filing a brief of

amicus curiae to adopt the briefs of the respondents filed herein.

The question presented by this certiorari is whether the Federal Power Commission may grant a permit to construct a dam on a State stream when the applicant for the permit has not complied with the State laws relevant to the use of such State waters.

The Commonwealth of Pennsylvania, in its sovereign power, has authority to protect the rivers, streams, waterways, water supplies and water power sites which are not within the jurisdiction of the Federal government, *Borough of Windber v. Spadone*, 356 Pa. 130 (1947); *Commonwealth v. Pennsylvania Railroad Company*, 78 Pa. Superior Ct. 389 (1922). To this end, the Legislature of Pennsylvania has enacted a great body of water legislation. It has acted to protect the water and power supply within the Commonwealth, June 14, 1923, P. L. 700; to control in the public interest with respect to safety, navigation and water supply, the diversion of water, June 24, 1939, P. L. 842; to control floods, March 10, 1933, P. L. 43, June 25, 1913, P. L. 555, as amended, May 6, 1937, P. L. 559; to secure and maintain clean streams, June 5, 1947, P. L. 422. The Legislature has clearly provided in the foregoing statutes for cooperation by the Commonwealth with the Federal government in spheres of activity within the exclusive jurisdiction of the Commonwealth.

Pennsylvania is a heavily populated, highly industrial State. To conserve its water resources and to use them in accordance with the public interest, the Legislature has established a Water and Power Resources Board, April 9, 1929, P. L. 177, Article IV,

Section 431; June 21, 1937, P. L. 1865, Section 1, and a Public Utility Commission, April 9, 1929, P. L. 177, Article III, Section 303, June 21, 1937, P. L. 1865, Section 1.

An order of an agency of the Federal government abridging the valid laws and regulations of a sovereign state with respect to the use of its intrastate water, violates the Tenth Amendment to the Constitution of the United States. An adverse ruling by the Supreme Court would seriously jeopardize the orderly development and use of the waters of the Commonwealth and prejudice the rights of its citizens and residents.

Respectfully submitted,

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